

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOSEPH JACKLIN,)
) No. 624, 2010
Defendant Below,)
Appellant,) Court Below: Superior Court
) of the State of Delaware in
v.) and for New Castle County
)
STATE OF DELAWARE,) Cr. ID No. 1004009723
)
Plaintiff Below,)
Appellee.)

Submitted: February 17, 2011

Decided: March 8, 2011

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

ORDER

This 8th day of March, 2011, it appears to the Court that:

(1) Joseph Jacklin, appeals from his Superior Court convictions for possession with intent to deliver cocaine and maintaining a dwelling for the keeping of controlled substances. Jacklin contends that: (a) the Superior Court erroneously concluded that the administrative search of his home satisfied probation and parole guidelines; and, (b) the “New Castle County Safe Streets Unit is designed to deliberately outflank the United States and Delaware State Constitutions” and the Unit’s actions unconstitutionally violated his rights under both. Because the trial judge did not erroneously deny Jacklin’s motion to suppress and we find no merit to Jacklin’s second argument, we **AFFIRM**.

(2) Delaware Department of Corrections Probation Officer William Dupont¹ received a tip that Jacklin was involved in selling marijuana and crack cocaine. Dupont checked Jacklin's probation status and discovered that Jacklin had unreported motor vehicle violations and police contacts which violated the terms of his probation. Dupont and his supervisor conducted a case conference in which the supervisor granted Dupont permission to conduct an administrative search of Jacklin's residence. Dupont attempted a search at Jacklin's residence but Jacklin was not home. Dupont took no further action that day.

(3) Approximately a month later Dupont received information from an additional independent source that Jacklin was selling marijuana and cocaine out of a white work van. Dupont conducted another case conference, after which his supervisor reapproved the search of Jacklin's residence. The next day, while surveilling Jacklin's residence Dupont watched Jacklin and another man leave Jacklin's residence and get into a white van. Dupont followed the van and watched it make two turns without signaling, Dupont then relayed that information to New Castle County Police Detective Brian Shahan, who initiated a traffic stop.²

¹ Dupont was a member of the New Castle County Safe Streets Unit, "a collaborative operation or agreement between County Police and Delaware Probation and Parole." (App. to Op. Br. at A-29).

² Shahan observed that, despite the fact that it was raining that day, the van did not have its headlights on. App. to Op. Br. at A-24.

(4) Both Dupont and Shahan participated in the traffic stop and both noticed a strong smell of marijuana and observed “blunt shavings” in the van. Shahan arrested Jacklin and the driver of the van. At that time, the van’s driver admitted that he had marijuana in his boot, and Dupont retrieved it. After the traffic stop, Dupont informed Jacklin that he was going to administratively search Jacklin’s home. Jacklin then told Dupont that he owned the marijuana seized from the driver’s boot but that it was only for recreational use. While they were waiting to start the administrative search, Jacklin told Dupont that he would find marijuana in the kitchen drawer.

(5) The State charged Jacklin with possession with intent to deliver cocaine, maintaining a dwelling for the keeping of controlled substances, and other related offenses. On September 22, 2010, a Superior Court judge denied Jacklin’s motion to suppress the seized evidence. He held that Dupont validly searched Jacklin’s home because he received his tips from a previously reliable source, and Jacklin’s probation violations and criminal history created sufficient reasonable suspicion to conduct an “administrative” search of Jacklin’s home.

(6) On September 27, 2010, a Superior Court judge found Jacklin guilty of possession with intent to deliver cocaine and maintaining a dwelling for the keeping of controlled substances and sentenced him to four years at Level V, followed by one year of Level III probation.

(7) We review a trial judge’s denial of a motion to suppress after an evidentiary hearing for an abuse of discretion.³ To the extent the claim of error implicates questions of law however; our standard of review is *de novo*.⁴

(8) It is established law that “[p]robationers do not have the same liberties as ordinary citizens,”⁵ and that the unique nature of probationary supervision “justifies a departure from the usual warrant and probable cause requirements for searches.”⁶ A probationer’s special status notwithstanding, the warrantless search must still be “reasonable.”⁷ We have explained that a warrantless administrative search of a probationer’s home requires the probation officer have a “reasonable suspicion” for the search.⁸ “‘Reasonable suspicion’ exists where the ‘totality of the circumstances’ indicates that the officer had a ‘particularized and objective basis’ for suspecting legal wrongdoing.”⁹

³ *Sierra v. State*, 958 A.2d 825, 828 (Del. 2008) (citing *Donald v. State*, 903 A.2d 315, 318 (Del. 2006)).

⁴ *Id.*

⁵ *Id.* (citing *McAllister v. State*, 807 A.2d 1119, 1124 (Del. 2002)).

⁶ *Id.* (citing *Fuller v. State*, 844 A.2d 290, 292 (Del. 2004)).

⁷ *Id.*

⁸ *Id.* (citing *Donald*, 903 A.2d at 318-19).

⁹ *Id.* (quoting *United States v. Arizu*, 534 U.S. 266, 273 (2002)).

(9) The General Assembly has enacted laws consistent with this paradigm. First, the General Assembly has authorized probation officers to arrest probationers for a violation of any condition of probation.¹⁰ Second, the General Assembly has authorized probation and parole officers to effect searches of the individuals that they supervise in accordance with Department of Corrections procedures.¹¹ The Department of Corrections has adopted regulations governing warrantless searches of probationers in accordance with 11 *Del.C.* § 4321(d).¹²

(10) In *Sierra v. State*,¹³ we explained how those regulations operate:

Th[e] regulations provide that, absent exigent circumstances, a probation and parole officer must obtain the approval of a supervisor, manager or director before conducting a search. The officer and the supervisor must “hold a case conference using the Search Checklist as a guideline” unless “exigent circumstances exist forcing the officer into action.”

“Generally, the following factors should be considered when deciding whether to search: [1] The Officer has knowledge or sufficient reason to believe [that] the offender possesses contraband; [2] The Officer has knowledge or sufficient reason

¹⁰ 11 *Del. C.* § 4334(b) (“The Commissioner, or any probation officer, when in the Commissioner’s or probation officer’s judgment there has been a violation of *any* condition of probation or suspension of sentence, may arrest such probationer without a warrant. . . .”) (emphasis added).

¹¹ 11 *Del. C.* § 4321(d) (“Probation and parole officers shall exercise the same powers as constables under the laws of this State and may conduct searches of individuals under probation and parole supervision in accordance with Department procedures while in the performance of the lawful duties of their employment . . .”).

¹² See Delaware Department of Corrections Bureau of Community Corrections Probation and Parole Procedure No. 7.19 (amended effective June 5, 2001).

¹³ 958 A.2d 825 (Del. 2008).

to believe [that] the offender is in violation of probation or parole; [3] There is information from a reliable informant indicating [that] the offender possesses contraband or is violating the law; [4] The information from the informant is corroborated; [5] Approval for the search has been obtained from a Supervisor.” Under those regulations, a probation and parole officer must have personal “knowledge or sufficient reason to believe” or must have received “information from a reliable informant” that the probationer or parolee possesses contraband, is in violation of probation or parole, or is violating the law. Thus, Delaware law does not permit suspicionless searches of probationer or parolee residences.¹⁴

(11) In this case, after receiving the first tip about Jacklin, Dupont checked Jacklin’s probation status and learned that “he had incurred new motor vehicle charges and according to [the] case notes, had failed to report any of those new charges or police contacts with [the] probation office.”¹⁵ Jacklin violated the conditions of supervision when he failed to report the charges and police contact. Consequently title 11, section 4334(b) of the Delaware Code authorized Dupont to arrest Jacklin without a warrant.¹⁶

¹⁴ *Id.* at 829 (quoting Delaware Department of Corrections Bureau of Community Corrections Probation and Parole Procedure No. 7.19 § VI).

¹⁵ App. to Op. Br. at A-24.

¹⁶ *See Sierra*, 958 A.2d at 829 (quoting Delaware Department of Corrections Bureau of Community Corrections Probation and Parole Procedure No. 7.19 § VI).

(12) After his arrest, Jacklin admitted that he co-owned the marijuana Dupont seized from the van's driver.¹⁷ Further, when Jacklin and the officers arrived at his residence, he "willingly admitted to [Dupont] that there was marijuana located in the kitchen drawer."¹⁸ At the point Dupont conducted the search of Jacklin's residence, he had supervisor approval to conduct an administrative search and Dupont conducted the search in substantial compliance with Department of Corrections regulations.¹⁹ Accordingly, the Superior Court judge did not erroneously deny Jacklin's motion to suppress.

(13) Jacklin also argues the "the New Castle County Safe Streets Unit is designed to deliberately outflank the United States and Delaware State Constitutions, by using probation officers as a 'stalking horse' for the Police to conveniently bypass the search warrant requirement."²⁰ However, the United States Supreme Court and the United States Court of Appeals for the Third Circuit have rejected such "stalking horse" arguments under the United States

¹⁷ App. to Op. Br. A-25, A-27. The officers did not read Jacklin his *Miranda* rights prior to this statement, but Jacklin made the statement voluntarily; not as a result of police questioning. See App. to Op. Br. at A27; *Culver v. State*, 956 A.2d 5, 22 (Del. 2008) (citing *Tolson v. State*, 900 A.2d 639, 644 (Del. 2006) ("[A]n officer cannot be held responsible for an unforeseeable statement by the suspect. An interrogation only encompasses actions or words by the officer that he or she should have known would elicit an incriminating response.")).

¹⁸ App. to Op. Br. at A-31

¹⁹ See *Pendleton v. State*, 990 A.2d 417, 420 (Del. 2010) ("[P]robationers' and parolees' status curtails their rights; consequently, substantial compliance with departmental regulations is satisfactory evidence of reasonableness in Delaware.").

²⁰ Appellant's Op. Br. at 14-16.

Constitution.²¹ “[Jacklin’s] argument under the Delaware constitution has been waived because he has made only a conclusory claim that the probation and parole administrative search here, under the circumstances described, violate the Delaware constitution before the Superior Court and this Court.”²² We, therefore, find no merit to Jacklin’s second argument.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

²¹ See *U.S. v. Knights*, 534 U.S. 112, 122 (U.S. 2001) (“[W]e have been unwilling to entertain Fourth Amendment challenges based on the actual motivations of individual officers.”) (quoting *Whren v. United States*, 517 U.S. 806, 813 (1996)); *United States v. Williams*, 417 F.3d 373, 378 (3d Cir. 2005) (“‘Stalking horse’ claims are necessarily premised on some notion of impermissible purpose, but *Knights* found that such inquiries into the purpose underlying a probationary search are themselves impermissible.” See also *United States v. Brown*, 346 F.3d 808, 810-12 (8th Cir. 2003); *United States v. Tucker*, 305 F.3d 1193, 1199-1200 (10th Cir. 2002); *United States v. Stokes*, 292 F.3d 964, 967-68 (9th Cir. 2002); *United States v. Reyes*, 283 F.3d 446, 463-64 (2d Cir. 2002)).

²² See *Culver v. State*, 956 A.2d 5, 21 n.56 (Del. 2008) (citing *Ortiz v. State*, 869 a.2d 285, 291 n.4 (Del. 2005)) (“The proper presentation of an alleged violation of the Delaware Constitution should include a discussion and analysis of one or more of the following criteria [textual language, legislative history, preexisting state law, structural differences, matters of particular state interest or local concern, state traditions, and public attitudes].”).